

RESOLUTION NO. 2010-58

A RESOLUTION OF THE CITY OF LODI MAKING FINDINGS AS A
RESPONSIBLE AGENCY UNDER CEQA; APPROVING THE LODI ENERGY
CENTER POWER SALES AGREEMENT AND THE PROJECT MANAGEMENT
AND OPERATION AGREEMENT; AND APPROVING THE LODI ENERGY
CENTER AMENDED AND RESTATED GROUND LEASE AGREEMENT AND
AGREEMENT TO SUPPLY RECYCLED WATER

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WHEREAS, Lodi has elected to participate in the 280 MW (nominal) Lodi Energy Center (LEC) being developed by the Northern California Power Agency (NCPA); and

WHEREAS, Lodi's Generation Entitlement Share in the LEC is 9.3561% or a nominal 26.20 MW; and

WHEREAS, the California Energy Commission (CEC) has approved the LEC Application for Certification (AFC) on April 21, 2010, and such approval by the CEC includes various environmental analysis, findings and mitigation measures under the terms of the Warren-Alquist Act (Public Resources Code Section 25500 *et seq.*). The CEC's analysis, findings, and mitigation measures constitute the equivalent of an environmental impact report for purposes of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000 *et seq.*) as a "certified regulatory program" pursuant to CEQA Guidelines Section 15251(j). The CEC has acted as the "lead agency" for this Project for purposes of environmental analysis. As a consequence, rather than conducting its own independent environmental analysis under CEQA, Lodi is acting as a "responsible agency" under CEQA and is thus responsible for considering the analysis, findings, and mitigation measures of the CEC and reaching Lodi's independent conclusions on whether and how to approve the LEC (CEQA Guidelines Section 15096); and

WHEREAS, Lodi, acting as a responsible agency, has independently considered the analysis, findings, and mitigation measures prepared by CEC as reflected in Exhibit A attached to this Resolution; and

WHEREAS, NCPA and Participants have prepared a Power Sales Agreement (PSA), which upon execution by all the LEC Participants and NCPA will permit financing, construction, and operation of the Project; and

WHEREAS, the Lodi City Council understands that, if one or more other Project Participants reduce or increase their Generation Entitlement Share (GES), Lodi may revise its GES to a GES between a minimum of 8.57% and a maximum of 10% to effectuate Project financing and construction; and

WHEREAS, the City of Lodi is desirous of NCPA managing and operating the LEC on its behalf, and on behalf of other Project participants, and NCPA and Participants have prepared a Project Management and Operation Agreement (PMOA), which upon execution by LEC Participants and NCPA provides for LEC management and operation by NCPA; and

WHEREAS, the City of Lodi acknowledges that the PSA forms a Project Participant Committee (PPC), which will provide Project governance and to establish, and from time to time revise, directives related to LEC capital expenditures, budgets, operations, and maintenance, among other items, and that Lodi is to designate a Lodi official responsible for serving as Lodi's representative and alternate representative on the PPC; and

WHEREAS, NCPA and the City of Lodi have prepared an Amended and Restated Ground Lease Agreement, which upon execution by the City of Lodi and NCPA will provide payment to the City of Lodi for the LEC's location and use of land owned by the City of Lodi for the life of the LEC; and

WHEREAS, NCPA and the City of Lodi have prepared an Agreement to Supply Recycled Water, which upon execution by the City of Lodi and NCPA will provide recycled water to LEC from the City of Lodi's White Slough Water Pollution Control Facility for the life of the LEC.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby acting in its capacity as a responsible agency for purposes of CEQA makes the findings as provided in Exhibit A of this resolution and hereby directs the City Manager or his designee to record a Notice of Determination in the County of San Joaquin reflecting these findings; and

BE IT FURTHER RESOLVED that the City Council hereby approves the Power Sales Agreement and the Project Management and Operation Agreement, authorizes the City Manager or his designee to execute these two agreements with such non-substantive changes as the City Manager finds beneficial on behalf of Lodi and to adjust Lodi's Generation Entitlement Share as reflected in the PSA and PMOA to between a minimum of 8.57% and a maximum of 10% to effectuate Project financing and construction, and authorizes the Electric Utility Director to administer these agreements; and

BE IT FURTHER RESOLVED that the City Council hereby designates the Electric Utility Director or his designee as the Lodi's representative on the PPC and authorizing the Electric Utility Director to designate alternate representatives and notify NCPA of such designations; and

BE IT FURTHER RESOLVED that the City Council hereby approves the Amended and Restated Ground Lease Agreement and the Agreement to Supply Recycled Water between NCPA and the City of Lodi, authorizes the City Manager or his designee to execute these agreements with such non-substantive changes as the City Manager finds beneficial on behalf of the City of Lodi, and authorizes the City Manager or his designee to administer these agreements.

Dated: May 5, 2010

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I hereby certify that Resolution No. 2010-58 was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 5, 2010, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Mounce, and Mayor Katzakian

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



City Clerk

EXHIBIT A

ENVIRONMENTAL FINDINGS

The City of Lodi (Participant), as a Participant in the Lodi Energy Center (Project), makes the following findings pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 *et seq.*, and the Guidelines implementing CEQA ("CEQA Guidelines") Code of Regulations, title 14, section 15000 *et seq.*

1. The California Energy Commission ("CEC") is the lead agency for this Project under CEQA.
2. The CEC is a certified regulatory agency pursuant to CEQA section 21080.5 and CEQA Guidelines sections 15250 – 15253.
3. As a certified regulatory agency, rather than an Environmental Impact Report ("EIR"), the CEC prepares an "EIR substitute" as the CEQA documentation for the Project.
4. The CEC's EIR substitute for this Project is the Presiding Member's Proposed Decision ("PMPD") released on March 10, 2010, as supplemented by the "Errata to the Presiding Member's Proposed Decision" dated April 20, 2010, and approved by the CEC on April 21, 2010 without further substantive change.
5. Participant is a responsible agency for the Project under CEQA.
6. Participant finds that the CEC's process meet all of the conditions of CEQA Guidelines section 15253 that would allow Participant to use and rely upon the CEC findings. Specifically, Participant finds that:
 - a. The CEC is the first to grant a discretionary approval for the Project.
 - b. The CEC provided Participant the opportunity to consult with the CEC and to comment on the PMPD.
 - c. The PMPD considers both the significant environmental impacts of the Project that are within the jurisdiction of the Participant, if any, and considers alternatives to the Project.
 - d. The CEC exercised its powers as lead agency by considering all of the environmental impacts of the Project and made the appropriate findings pursuant to CEQA Guidelines section 15091 for each significant impact of the Project.
7. Participant has considered the PMPD and the environmental impacts of the Project described in the PMPD, pursuant to CEQA Guidelines 15096 subdivision (f).
8. The PMPD concludes that, as conditioned, the Project will not have any significant adverse effects on the environment. Thus, pursuant to CEQA Guidelines 15096 subdivision (g), Participant finds that there are no alternatives or mitigation measures within the powers of Participant to adopt that would substantially reduce or avoid any significant environmental impact of the Project.

9. Pursuant to CEQA Guidelines 15096 subdivision (h), Participant is required to make findings pursuant to CEQA Guidelines section 15091 for each significant impact of the Project. Participant has considered the PMPD, the description of the Project's environmental impacts contained therein, the findings of fact and conclusions of law contained therein, and the conditions of certification contained therein, and, exercising its independent judgment, Participant finds the following:
 - a. For all environmental impacts of the Project, changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effects as identified in the PMPD.
 - b. These findings are supported by substantial evidence in the record.
 - c. The conditions of certification imposed on the Project by the CEC are within the authority of the CEC and will be monitored and enforced by the CEC.
10. That approval of both the Power Sales Agreement and Project Management and Operation Agreement, providing for the financing, construction and operation of the Project has no impacts on the environment not addressed within the prior CEC analysis.